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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187822
Party	Defendant IBIDMOTORS
Correspondence Address	ROYAL W. CRAIG OBER/KALER 120 EAST BALTIMORE STREET BALTIMORE, MD 21202-1643 UNITED STATES
Submission	Other Motions/Papers
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Date	01/12/2009
Attachments	91187822 Motion to Dismiss in Part or JOTP.pdf (3 pages)(10880 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
76/671,087

Published in the Official Gazette on June 3, 2008

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)	
uBid, Inc.)	
)	
Opposer,)	Opposition No.: 91187822
)	
v.)	Ibid Motors Corporation's
)	Motion to Dismiss in Part; Points &
IBidMotors Corporation, New Jersey)	Authorities in Support Thereof
)	
Applicant.)	
)	

**MOTION TO DISMISS IN PART OR IN THE ALTERNATIVE FOR
JUDGMENT IN PART ON THE PLEADINGS**

TO: uBid, Inc. and its Attorneys of Record:

PLEASE TAKE NOTICE that IBidMotors Corporation, by this document and pursuant to 37 C.F.R. § 2.127, moves the Trademark Trial and Appeal Board to dismiss in part on the grounds and for the reasons set forth in the accompanying Memorandum of Points and Authorities. Alternately, IBidMotors Corporation hereby moves the Trademark Trial and Appeal Board for judgment in part on the pleadings on the grounds and for the reasons set forth herein.

MEMORANDUM OF POINTS AND AUTHORITIES

1. This proceeding concerns Opposer uBid, Inc.'s ("Opposer") Opposition to Applicant, IBidMotors Corporation's ("Applicant"), Application Serial No. 76/671,087 for IBIDMOTORS (& design) (the "IBid Application").

2. One of the registrations cited by Opposer in its Opposition, specifically, UBID THE MARKETPLACE YOU CAN TRUST, R/N 3,065,399 (the “Junior Opposer Registration”), has a date of first use in commerce that is after the date of first use in commerce of the Ibid Application. As Applicant’s rights in Applicant’s mark are senior to Opposer’s rights in the Junior Opposer Registration, the Junior Opposer Registration does not establish any prior rights for Opposer against Applicant’s mark, and cannot establish that Applicant’s mark causes a likelihood of confusion against the Junior Opposer Registration. Consequently, Opposer has failed to allege grounds sufficient to establish any prior rights in the Junior Opposer Registration. Applicant hereby moves that the Junior Opposer Registration be dismissed from the Opposition. In the alternative, Applicant hereby moves for judgment on the pleadings with regard to the Junior Opposer Registration.

For the foregoing reasons, it is submitted that good grounds exist for granting the motion, and such action is requested.

Dated this 12th Day of January 2009.

BY: /Royal W. Craig/
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion to Dismiss In Part has been served on uBid, Inc. by mailing said copy on this 12th day of January, 2009, via First Class Mail, postage prepaid, to:

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